

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

CRAIG CUNNINGHAM,

Plaintiff,

Case No. 16-CV-761-JDP

vs.

MICHAEL MONTES, et al.,

Madison, Wisconsin

June 10, 2019

Defendants.

11:45 a.m

* * * * *

STENOGRAPHIC TRANSCRIPT EXCERPT - FIRST DAY OF JURY TRIAL

(TESTIMONY OF CRAIG CUNNINGHAM)

HELD BEFORE CHIEF JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

Law Offices of Todd M. Friedman, P.C.

BY: DAVID B. LEVIN

STEVEN G. PERRY

333 Skokie Boulevard

Suite 103

Northbrook, Illinois 60062

For the Defendants:

Axley Brynelson, LLP

BY: KEVIN D. TROST

2 East Mifflin Street

Suite 200

Madison, Wisconsin 53703

CHERYL A. SEEMAN, RMR, CRR

Federal Court Reporter

United States District Court

120 North Henry Street, Room 410

Madison, Wisconsin 53703

1-608-261-5708

1 **I-N-D-E-X**

2	<u>PLAINTIFF'S WITNESS</u>	<u>EXAMINATION</u>	<u>PAGES</u>
3	CRAIG CUNNINGHAM	Direct by Mr. Levin	3-37
4		Cross by Mr. Trost	37-46
		Redirect by Mr. Levin	46-49

5 **E-X-H-I-B-I-T-S**

6	<u>PLAINTIFF'S EXHIBITS</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>
7	Ex. 1 - Call Spreadsheet	13	-
	Ex. 5 - Call Detail Records (9191)	25	-
8	Ex. 6 - " (7262)	25	-
	Ex. 7 - " (1977)	26	-
9	Ex. 8 - " (9191)	27	-
	Ex. 9 - " (7262)	27	-
10	Ex. 10 - " (1977)	27	-
	Ex. 11 - Declaration	28	-
11	Ex. 14 - Sign-Up Form	9	-
	Ex. 15 - Drop-Down Menu	10	-

12 ***

13 (Trial proceedings at 11:45 a.m.)

14 THE COURT: All right. We will now begin the
 15 plaintiff's case. And the plaintiff can call his first
 16 witness.

17 MR. LEVIN: Plaintiff calls Mr. Craig Cunningham
 18 to the stand.

19 THE COURT: Very good. Is the podium blocking
 20 anyone's view? Mr. Trost, is that in your way at all?

21 MR. TROST: No.

22 THE COURT: Okay. We'll move it over the lunch
 23 break, but let's just get working now.

24 Mr. Cunningham, the court reporter is going to swear

1 you to tell the truth.

2 **CRAIG CUNNINGHAM, PLAINTIFF'S WITNESS, SWORN**

3 THE COURT: All right. Mr. Cunningham, you don't
4 need to lean into the microphone every time you speak.
5 But if you'd keep your chair parked where you're about a
6 foot away from the microphone, as you are now, that should
7 be just fine.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: Go ahead, Mr. Levin.

10 MR. LEVIN: Thank you.

11 DIRECT EXAMINATION

12 BY MR. LEVIN:

13 Q. I think by this point we all know who you are. But
14 just for the record, would you please state your full
15 name?

16 A. Yes. Craig Ruselmani Cunningham.

17 Q. And you are the plaintiff in this lawsuit, correct?

18 A. Yes, I am.

19 Q. Mr. Cunningham, what do you do for a living?

20 A. Right now I have an e-commerce business; third-party
21 seller on Amazon; primarily sports nutrition products,
22 protein powders, preworkouts, a lot of stuff you would see
23 at a GNC store.

24 Q. What kind of work did you do before you got into this
25 business?

1 A. Prior to that I had a check cashing business in
2 Nashville. I was in the Army for five and-a-half years,
3 honorably discharged. And in 2003 I graduated from the
4 United States Military Academy at West Point, New York.

5 Q. Okay. And do you have any other formal education
6 after West Point?

7 A. Yes. I have a dual degree. It's a master's in
8 business administration, a focus on supply chain, and a
9 master's in finance from Northeastern University.

10 Q. Okay. And can you just tell us a little bit about
11 your military service after you graduated from West Point?
12 What did you do while you were in the Army?

13 A. Certainly. I worked with the Patriot missile
14 systems. So that's a surface-to-air missile. Primarily
15 started off with focusing on Russian bombers in the Gulf
16 War. We had the capability of shooting down large-caliber
17 rockets, such as scud missiles. So that was the focus for
18 it.

19 Spent a year in South Korea on the DMZ, so literally
20 staring at the North Koreans closer than I am to you right
21 now at times. So that was an interesting year-long
22 experience. And one of the things that I'm most proud of
23 is I helped to get an act of Congress passed banning use
24 of financial products that were targeted at the military.

25 Q. Okay. Thank you. So during the time frame at issue

1 with this case going back to 2015, have you been the
2 registered owner of any cellular or mobile telephone
3 numbers during that time?

4 A. Yes. 615-348-1977, 615-212-9191 and 615-331-7262.

5 Q. Okay. And those are all your phone numbers?

6 A. Correct.

7 Q. And again those are cellular or mobile numbers, not a
8 residential line or what some people call a *landline*?

9 A. They're not landlines. They are my personal cell
10 phone numbers.

11 Q. Okay. Why do you have three separate mobile phone
12 numbers?

13 A. When I had my check cashing business, I had several
14 phone numbers, fax phone numbers for the store, and I just
15 decided to keep the three. The 348-1977 is the one that I
16 had for a while as a cell phone number and I got the other
17 two. Basically some were for business and then just as a
18 backup if I need to for traveling, doing things with one
19 phone. For example, for driving, I can navigate with one
20 and, you know, just have the other phone if I were talking
21 on it or doing whatever.

22 Q. Okay. And I think we all know the answer to this
23 question already, but have you ever received any
24 telemarketing calls on those numbers?

25 A. Quite -- quite a bit, yes. I've received many

1 telemarketing calls, probably several thousand a year.

2 Q. Could you describe some of these telemarketing calls
3 you've received, what the people calling you were trying
4 to sell?

5 A. Certainly. A lot of typical calls that everybody
6 else gets: car warranties, vacation clubs. Somehow, you
7 know, I've gotten a bunch of calls about multilevel
8 marketing products and so forth, get rich -- I call them
9 *get-rich-quick schemes* because that's what they are
10 basically, someone promising you, you know, "Blew my mind.
11 I couldn't believe when I got the message," basically
12 selling hope and promises that they can't possibly
13 fulfill.

14 Q. When you say "multilevel marketing," what do you mean
15 by that? What does that term mean to you?

16 A. So these are essentially pyramid-type schemes where
17 you have a few people at the top making a bunch of money
18 and then they recruit followers and people under them.

19 Generally you're selling a product or service such as
20 Amway or AdvoCare. AdvoCare sells sports and nutrition
21 products, protein powders and forth. With these calls in
22 particular, they're just selling the opportunity to sell
23 the opportunity and the only way you make money is by
24 getting more people. There's no product or service really
25 being sold.

1 Q. And do you know if any of these telemarketing calls
2 that you received over the last few years were automated
3 calls?

4 A. Yes. The vast majority of them were automated calls.
5 You can generally tell. There's sometimes an audible
6 tone, three or four seconds of dead air, and then the
7 prerecorded message starts. Those are some of the
8 indications that it's an automated call.

9 Q. Can you estimate in any way how many telemarketing
10 calls of this nature that you've received, say, going back
11 to the beginning of 2015 on any of your three mobile phone
12 numbers?

13 A. If it's not a holiday or a weekend, I am going to get
14 a call from someone about something that I have no --
15 probably have no interest in, never asked for and don't
16 want, so easily three to five a day. I think the most
17 I've gotten in a day was probably 40 or 50 in one single
18 day. So probably five to ten a day if you're looking at
19 250 days, 260 days a year. So not including holidays or
20 weekends, you're looking at probably several thousand
21 calls, 2,000 calls or so, every year.

22 Q. Now, are you claiming that defendant in this case,
23 Michael Montes, is the one himself who actually placed
24 those calls to you?

25 A. No. I don't think he specifically hit the button to

1 start the calls. I do think he did just about everything
2 else -- training the people, profiting from the calls,
3 instructing them how to do it, doing videos, webinars,
4 presentations, answering questions -- so everything but
5 hitting the final button to say send.

6 Q. So how do you know that? How are you able to draw
7 connections --

8 THE COURT: Mr. Trost, I'm going to ask you to
9 not converse your client during the testimony. You can
10 pass a little note if you need to communicate.

11 MR. TROST: Okay. Thank you.

12 THE COURT: Sorry for the interruption. Go
13 ahead.

14 MR. LEVIN: That's all right. Thank you.

15 BY MR. LEVIN:

16 Q. So how did you know that? How were you able to draw
17 any connection between the calls you received and the
18 defendants in this case?

19 A. Well, so I would do some obviously investigation into
20 these callers and who's calling. Sometimes I'd talk with
21 them and say, "Hey, so where did you get my number from?"

22 "Oh, well, there's this guy named Mike Montes. He
23 gave it to me. He's the one who set me up with this."

24 Some wouldn't tell me directly. Others, as part
25 of -- I know Jerry Maurer, for example, Maurer has a blog

1 for his MLM followers. And he will tell them, "If you
2 want to do automated calls, call Mike Montes. Here's his
3 phone number." And I pretty much inferred then Jerry
4 Maurer was a client of Michael Montes because he's
5 recommending his products and services.

6 MR. TROST: Your Honor, I have to object. It's
7 hearsay.

8 THE COURT: Sustained.

9 BY MR. LEVIN:

10 Q. Did you ever do any internet research trying to
11 figure out who Mr. Montes was once you became familiar
12 with his name?

13 A. Yes. I looked at his name -- looked up his name,
14 came across his company, AutoDialer123, or the website
15 AutoDialer123. That is, I believe, one of his websites
16 that he owns and sells -- signs up people for automated
17 call services.

18 Q. Okay. I'd like you to please open the book in front
19 of you there and turn to what was previously marked as
20 Plaintiff's Exhibit No. 14. Now, I'll warn you --
21 sorry -- when these were put together, the exhibit itself
22 is in front of the tab with the number on it. So you're
23 looking at the exhibit, it says, AutoDialer123.com in the
24 upper left-hand corner?

25 A. Yes.

1 Q. Let's -- I'll display that on the screen for the
2 jury.

3 THE COURT: Will you be having this
4 electronically? So you'll need your computer, right?

5 BY MR. LEVIN:

6 Q. So you've seen this AutoDialer123.com website before?

7 A. Yes. I'm familiar with it.

8 Q. And the document that you're looking at in the
9 exhibit book there and the document that's displayed for
10 the jury on the screen, does that appear to be from the
11 AutoDialer123.com website?

12 A. Yes.

13 Q. Have you seen this sign-up form before?

14 A. Yes, I have.

15 Q. If you could now please turn to the next exhibit that
16 was marked as Exhibit No. 15. Have you ever looked at
17 this drop-down menu from the AutoDialer123.com website
18 sign-up form?

19 A. Yes. This is part of my research, seeing if these
20 callers were related to Michael Montes. And I noticed
21 many of the familiar names that I was being called from:
22 For example, 8 Figure Dream Lifestyle; Enagic; MMM, which
23 is Millionaire Marketing Machine.

24 THE COURT: Are we looking at the drop-down menu
25 here?

1 MR. LEVIN: Yes.

2 THE COURT: It might be worth zooming in on that.

3 MR. LEVIN: Sure. Okay.

4 BY MR. LEVIN:

5 Q. Go on, Mr. Cunningham.

6 A. Yes, I saw several familiar names from companies that
7 were calling me at the time: for example, 8 Figure Dream
8 Lifestyle at the top; Enagic, which is another MLM
9 company, they do alkalized water and make -- you know,
10 people make all sorts of fantastic claims that it makes
11 dogs poop less stinky and it cures cancer and all sorts of
12 exaggerated claims; MMM, Millionaire Marketing Machine;
13 SSM, Secret Success Machine; and towards the bottom you
14 have TiDOM, which is TiDOM -- it's an acronym that's
15 supposed to be for *time freedom* -- and Elite Marketing
16 Alliances is kind of interchangeable entities.

17 Q. In your research that you did, did you ever find any
18 evidence of Mr. Montes anywhere else on the internet?

19 A. Yes. I came across several press releases about --
20 and a judgment from Missouri and also -- I'm sorry, press
21 release from the State of Mississippi and a judgment
22 against him from the State of Missouri for breaking their
23 state telemarketing laws and also YouTube videos, a lot of
24 YouTube videos, from AutoDialer123 or Michael Montes's
25 personal YouTube account.

1 Q. Did you watch any of these YouTube videos?

2 A. Yes. I watched almost all of them. And they go into
3 various instruction that he's giving to how to make a
4 payment, how to upload calls, how to do this, how to do
5 that and pretty much step by step. So if you're
6 completely unfamiliar with how to make automate calls
7 after going through these various videos, tutorials, I
8 think almost anyone should be able to do it with relative
9 ease. I don't think -- I wouldn't have been able to look
10 at the system and make sense of it without looking through
11 those videos.

12 Q. So did you ever do anything to track these calls to
13 kind of try to keep track of how many you were receiving
14 that you thought might be attributable to Mr. Montes and
15 his company?

16 A. Yes. I have an Apple iPhone that records calls,
17 dates, times, caller IDs and so forth. You can put notes,
18 export them. It's pretty handy for tracking calls.

19 So I just started, when I was getting so many calls
20 and a rash of these calls, I started keeping track of
21 them -- looking at any trends, who's calling, caller IDs
22 and so forth -- to try and figure out who's calling.

23 Sometimes they would even change systems. So people
24 would start calling for SSM, Secret Success Machine, for
25 example, and then six months later the same people would

1 be calling trying to sell Enagic, the water machine.

2 Q. If you could please turn to the first exhibit in the
3 book in front of you that's been marked as Exhibit No. 1
4 which I will explain for the jury in a moment. Do you
5 recognize this document?

6 A. Yes. This is a spreadsheet of calls that I put
7 together.

8 Q. Could you explain to us how you put this spreadsheet
9 together?

10 A. This one was a basic export of an Excel spreadsheet
11 with the caller IDs identified and the dates of them. So
12 in the top you have the phone number that I received calls
13 on, which was 212-9191, then the dates that I received the
14 calls and then of course caller IDs on the left column.

15 Q. And how did you decide or determine that each of
16 these calls are ones that you were attributing to
17 customers of Mr. Montes?

18 A. So these, I looked at the caller IDs and basically
19 saved the saved calls that I have and recorded calls and
20 then I would just go through my phone records and try and
21 see how many times they called and come up with a total
22 list of calls.

23 Q. Okay. And the jury obviously can't see this all on
24 the screen at once. But if you could confirm, the exhibit
25 that you're looking at there, that spreadsheet consists of

1 four print pages?

2 A. Yes. That's correct.

3 Q. And you prepared all of this yourself?

4 A. Yes.

5 Q. And each of the telephone numbers and calls that
6 you've listed are people that -- some of the names that
7 you've already mentioned --

8 A. Yes. That's correct.

9 Q. -- that were customers of Mr. Montes?

10 A. Yes. So these were people I've attributed to these
11 various MLM calls and that I believe were clients of
12 Michael Montes at the time.

13 Q. And just to be clear, again when you say "MLM," what
14 do you mean by that?

15 A. Multilevel marketing.

16 Q. So prior to receiving any of these calls that you
17 have listed in this spreadsheet, Exhibit No. 1, did you
18 consent to any of these people or businesses calling you?

19 A. No.

20 Q. Did you give any of these callers any invitation or
21 permission to contact you on any of your mobile phone
22 numbers?

23 A. No. I had no idea who these people were.

24 Q. Did it appear that any of these calls that you
25 received were being made to you for emergency purposes?

1 A. No.

2 Q. Were any of these calls made to you from a school
3 district or a municipality or a politician?

4 A. No. I don't believe I've received a political call
5 ever or a municipal call.

6 Q. Okay. I'd like to now play for the jury a few
7 recordings that we have. And we'll listen to those and
8 we'll have a few questions for you about them.

9 MR. LEVIN: Sorry, Your Honor. Do I have to turn
10 the sound on from here?

11 THE COURT: I believe this channel has been
12 muted, but let's see. Okay. Why don't you try it again
13 and see if it comes up. So it's playing. Do you have
14 your audio? There's an audio channel there that's plugged
15 in.

16 MR. LEVIN: It worked the other day from an HD
17 cable.

18 THE COURT: So you've got an HDMI cable and
19 that's hooked up to our system?

20 (Audio recording played.)

21 BY MR. LEVIN:

22 Q. Okay. Mr. Cunningham, have you heard that recording
23 before?

24 A. Yes, I have.

25 Q. Is that a recording of a call that you received on

1 one of your three mobile phone numbers?

2 A. Yes.

3 Q. This gentleman who identifies himself as Coach Brian
4 from Colorado, do you have any idea who that is?

5 A. Absolutely. That's Brian Kaplan. He's a partner of
6 Jerry Maurer. And together they've pitched to me Secret
7 Success Machine, SSM; they did the water, the Enagic
8 Water; and then they also pitched the 8 Figure Dream
9 Lifestyle. They're the principals/corporate
10 owners/managers of/corporate officers of 8 FDL, 8 Figure
11 Dream Lifestyle.

12 Q. Okay. So you've received other calls from Mr. Kaplan
13 in the past as well?

14 A. Yes.

15 Q. And again if you could explain for us how exactly did
16 you make this recording.

17 A. That one was again from the app that I have on my
18 phone, Automatic Call Recorder. As soon as a call comes
19 in, basically if the number is not one of my saved numbers
20 in my phone book, it automatically records it.

21 Q. And then how do you get that recording off of your
22 phone?

23 A. Oh, that's a great thing. I can upload it to a share
24 drive or Google drive or Dropbox, for example. I can
25 email it. I've even sent it through Bluetooth from my

1 phone to my computer. So it's very flexible.

2 Q. And prior to receiving this particular prerecorded
3 message from Coach Brian in Colorado, did you provide any
4 kind of consent for him to call you?

5 A. No.

6 Q. Did you ever give him any invitation or permission to
7 call you on any of your three mobile phone numbers?

8 A. No.

9 MR. LEVIN: All right. Let's play the second
10 recording now.

11 (Audio recording played.)

12 BY MR. LEVIN:

13 Q. Okay. Mr. Cunningham, at the very beginning the
14 person is saying "hello." Did that sound to you to be
15 your own voice?

16 A. Yes, that's my voice.

17 Q. And so this is a recording that you made with the
18 call recorder app that you mentioned?

19 A. That's correct.

20 Q. And this particular website that was mentioned, did
21 you happen to go to that website to find out any more
22 information about what this call was for?

23 A. I probably went there. A lot of these people, they
24 have websites with similar-sounding names --

25 Q. Have you -- did you recognize having received calls

1 from this person in the past?

2 A. It sounded a little bit familiar. It might have been
3 Mark Barratt, but it sounds familiar.

4 Q. Okay. Let's move on to the third recording. I
5 apologize. Did you ever give this caller any consent to
6 call you?

7 A. No.

8 Q. Did you ever invite him or provide any permission for
9 him to call you?

10 A. Absolutely not.

11 MR. LEVIN: Okay. Thank you.

12 (Audio recording played.)

13 BY MR. LEVIN:

14 Q. Okay. Mr. Cunningham, was that your voice on the
15 call there?

16 A. Correct.

17 Q. And is this another recording that you made with the
18 call recorder app that you were talking about?

19 A. Yes, it is.

20 Q. And did you give this person permission to call you
21 prior to receiving this message?

22 A. No.

23 Q. Did you ever invite this person or consent in any way
24 for them to call you prior to receiving this message?

25 A. No.

1 Q. Okay. So we heard you at the end of that message
2 leaving your name and phone number. Why did you do that?

3 A. As part of the investigation inquiry into this, a lot
4 of caller IDs were spoofed. It's very difficult, if not
5 impossible, to figure out who's calling and how to stop it
6 without some level of engagement with them. That doesn't
7 mean I really want to get the calls. It doesn't mean I
8 have any interest in their ongoing whatever get-rich-quick
9 deal. But, you know, the calls do violate the TCPA and I
10 wanted to go up the chain, go up the ladder and figure out
11 who's making these and how to stop it.

12 MR. LEVIN: Okay. Let's move to the next
13 message.

14 (Audio recording played.)

15 BY MR. LEVIN:

16 Q. Okay. Mr. Cunningham, again is that a recording of a
17 call that you received?

18 A. Yes, it is.

19 Q. And did you make that recording with the call
20 recorder app that we were talking about earlier?

21 A. Yes, I did.

22 Q. And did you provide this caller with any invitation,
23 consent or permission to contact you prior to receiving
24 this call?

25 A. No, I didn't.

1 MR. LEVIN: And I'll play one more recording.

2 (Audio recording played.)

3 BY MR. LEVIN:

4 Q. Okay. Sorry to everyone. That one was a little bit
5 longer. But again, Mr. Cunningham, was that your voice on
6 the recording?

7 A. Yes, it was.

8 Q. And did you make this recording with the call
9 recorder app that we've been talking about?

10 A. Yes, I did.

11 Q. And this woman named Dana, did you ever give her your
12 consent or permission or invite her to call you on any of
13 your three cellular phone numbers?

14 A. No. That's Dana Ehrlich. She's with TiDOM/Elite
15 Marketing Alliance. But no, I never gave her consent to
16 call.

17 Q. That's what I was going to ask next, if you knew who
18 she was. Were you able to find any connection between
19 Dana Ehrlich and the defendant in this case, Michael
20 Montes?

21 A. Absolutely. Looking through the YouTube videos,
22 Michael Montes did about an hour-plus, hour-20,
23 hour-30-minutes webinar/coaching/training involving Dana
24 Ehrlich and several of her followers with the TiDOM or
25 Elite Marketing Alliance organization.

1 Q. Now, you've made it a point to let us know your
2 feelings about receiving calls of this nature. So again
3 can you tell us why did you leave your name and number at
4 the end of that call?

5 A. Well, even though Dana Ehrlich's voice is on the
6 recording, that doesn't necessarily mean that Dana Ehrlich
7 is making the call. There's a host of followers, and so
8 forth, below her that she's trained, coached and
9 encouraged to make calls and so forth.

10 So to really find out who's making the call and get
11 positive identification on that person again you have to
12 engage with them a little bit to find out who's really
13 making the calls after that.

14 Q. So in leaving your name and number at the end of some
15 of these messages, were you asking or inviting these
16 people to leave you more automated prerecorded messages?

17 A. Absolutely not. I never said "Call me using an
18 autodialer or prerecorded message." And honestly, most of
19 the calls after that were probably most likely manually
20 dialed by the individual. It's not really actionable and
21 that's really not what I'm suing over; it's just the
22 initial call from the telemarketers.

23 Q. So the calls that you would receive back after
24 leaving your name and number on some of these instances
25 were actual live callers calling you to talk about these

1 opportunity sales they were trying to make?

2 A. Correct. And that's how, you know, to basically get
3 inside the inner workings of these organizations, which
4 you're never going to find out just by listening to their
5 calls and so forth, and to ask questions like, "Hey, how
6 did you guys make these calls?"

7 "It's Michael Montes. He's our guy that we work
8 with."

9 MR. TROST: Object as hearsay.

10 THE COURT: That's hearsay. Sustained.

11 BY MR. LEVIN:

12 Q. Okay. Mr. Cunningham, there were many more
13 recordings of this nature that we turned over to the
14 defense as part of this case, correct?

15 A. Yes.

16 Q. Okay. And all of those recordings that we turned
17 over, how did you draw a connection between those callers
18 and Mr. Montes or his company TollFreeZone?

19 A. I just started to see trends with the various calls.
20 So say if it's Secret Success Machine, Jerry Maurer will
21 call. He would refer people to his website and there's a
22 link to Michael Montes as a telemarketer on Jerry Maurer's
23 website. Then I'd get calls about Enagic and same thing:
24 People with Enagic will refer me to --

25 MR. TROST: Object again on hearsay.

1 THE COURT: Are you going to show these
2 documents?

3 MR. LEVIN: Well, it's not a document; it's what
4 he was told.

5 BY MR. LEVIN:

6 Q. Did you find any --

7 THE COURT: The objection is sustained. The
8 things that are recorded, if he can document the website
9 connection, that's a different matter. But just reporting
10 what people told him is hearsay and it's excluded.

11 BY MR. LEVIN:

12 Q. So going back to what we were looking at earlier,
13 Exhibit No. 15 --

14 MR. LEVIN: I'm sorry. Can we display that on
15 the screen again?

16 THE COURT: Sure.

17 MR. LEVIN: The control that existed on the iPad
18 doesn't seem to be there unless I'm doing something
19 incorrectly.

20 THE COURT: Is there a *Jury Video*? I've got a
21 button that says *Jury Video*.

22 MR. LEVIN: It's looking for a passcode.

23 THE COURT: That happens from time to time.

24 MR. LEVIN: Okay. Thank you.

25 THE COURT: Somebody will come here and find the

1 passcode for you. But I can turn it on and off here
2 easily enough.

3 MR. LEVIN: Okay. Thank you. I think the
4 passcode should be there. Look at the back of the --

5 BY MR. LEVIN:

6 Q. So again this is the menu that you previously
7 identified having viewed on Mr. Montes's AutoDialer123.com
8 website. Were any of the people calling you and leaving
9 these prerecorded messages calling regarding the 8 Figure
10 Dream Lifestyle business?

11 A. Yes, they were.

12 Q. Were any of the people that were calling you and
13 leaving these prerecorded messages calling about the
14 Enagic alkalized water business?

15 A. Yes, they were.

16 Q. Were any of these people that were calling you and
17 leaving these prerecorded messages calling you about the
18 MMM or SSM that you identified earlier?

19 A. Yes, they were.

20 Q. And what did you believe those acronyms stood for?

21 A. MMM is Millionaire Marketing Machine and SSM is
22 Secret Success Machine.

23 Q. And then scrolling down to the bottom, were any of
24 these people that were calling and leaving you prerecorded
25 messages calling about the TiDOM business that you

1 mentioned?

2 A. Yes. That's Dana Ehrlich, TiDOM/Elite Marketing
3 Alliance.

4 Q. And now I'm going to show you and pull up on the
5 screen what's previously been marked as Plaintiff's
6 Exhibit No. 5. Now, at the bottom right-hand corner this
7 says *Page 1 of 66*. Hopefully we won't need to take the
8 time to have you identify all 66 pages. But do you
9 recognize the first page of this document?

10 A. Yes, I do.

11 Q. And what does that look like to you?

12 A. Those are the actual *Call Detail Records* from my
13 phone carrier, Republic Wireless.

14 Q. And what phone number are these records for?

15 A. That's for the 212-9191. It's at the very top.

16 Q. Okay. And how did you obtain these records?

17 A. I got it from my phone carrier via subpoena.

18 Q. Okay. I'm now going to display the first page of
19 what was previously marked as Plaintiff's Exhibit No. 6.
20 Do you recognize this document?

21 A. Yes, I do.

22 Q. What does this appear to be to you?

23 A. Same, call records for a different phone number from
24 my phone carrier.

25 Q. And which phone number does that relate to?

1 A. That's 331-7261.

2 Q. And who did you say that your phone carrier was?

3 A. Republic Wireless.

4 Q. This document states at the top *Bandwidth.com*.

5 A. Bandwidth.com is a very large phone provider. They

6 do wholesale -- various telecom services. At the time

7 Republic Wireless was a subsidiary of Bandwidth.com. So

8 to get those phone records was, strictly speaking, to

9 Bandwidth.com, but Republic Wireless was a subsidiary.

10 They were really spinning off as a separate company.

11 MR. TROST: Object as hearsay again.

12 THE COURT: It's not really hearsay. I don't
13 know that there's a foundation for it though. How does he
14 know all this?

15 BY MR. LEVIN:

16 Q. How do you know this, Mr. Cunningham?

17 A. I spoke with the chief legal officer for -- or
18 emailed the chief legal officer of Bandwidth.com.

19 Q. But regardless, these are from your cellular phone
20 provider?

21 A. Correct.

22 Q. And it is for one of your three cellular phone
23 numbers?

24 A. Correct.

25 Q. Okay. Thank you. I'm now on the display of what's

1 been marked as Plaintiff's Exhibit No. 7. And again we
2 won't go through all 268 pages here. But just looking at
3 the first page, do you recognize this?

4 A. Yes. This is again *Call Detail Records* from my phone
5 provider for my phone number 615-348-1977.

6 Q. And again how did you obtain these documents?

7 A. Via subpoena.

8 Q. And for the record again now I'll display what's been
9 previously marked as Plaintiff's Exhibit No. 8. Do you
10 recognize this first page of this 111-page document?

11 A. Yes. This is again *Call Detail Records* from my phone
12 provider for 615-212-9191. And at the top it says
13 *Republic Wireless, Incorporated.*

14 Q. I'm now showing you what's been previously marked as
15 Plaintiff's Exhibit No. 9.

16 A. Yes. These are my phone records, *Call Detail*
17 *Records*, for 331-7261. Again this one says *Republic*
18 *Wireless* at the top.

19 Q. And finally I'll display what's been marked as
20 Plaintiff's Exhibit No. 10. What's the first page of this
21 388-page document?

22 A. *Call Detail Records* for 348-1977, also my phone
23 number from my phone carrier, *Republic Wireless*.

24 THE COURT: Just to clarify, so we have six
25 exhibits here, two for each of the three phone numbers.

1 So what's the difference between -- why separate
2 documents, if you could?

3 MR. LEVIN: In fact, I was just going to ask
4 Mr. Cunningham that myself.

5 THE COURT: And then we're at the point where we
6 need to take the lunch break. Because you've gone through
7 those documents, let's wrap up on these and then this will
8 be a good breaking point then.

9 BY MR. LEVIN:

10 Q. Okay. And so, Mr. Cunningham, if you could please
11 explain for Judge Peterson and the jury, do you know why
12 we have two separate sets of phone records for each of the
13 three phone numbers?

14 A. Certainly. They're basically for separate periods of
15 time where I obtained the phone records, the ones from
16 2015 to about -- it's about 18 months. And then the other
17 one is from basically the end of 2016 through 2017. And
18 like I said, they're just -- one was from, strictly
19 speaking, the legal entity Republic Wireless and the other
20 one was from Bandwidth, the name of the parent company of
21 Republic Wireless.

22 Q. Okay. Thank you. And then just to tie this
23 together, if you could just turn in the book in front of
24 you to what was previously marked as Plaintiff's Exhibit
25 No. 11.

1 THE COURT: I don't know that the jury needs to
2 worry about this. I think we've already covered this.
3 This is just to establish the basis for the admission of
4 the document; is that right?

5 MR. LEVIN: Correct.

6 THE COURT: I've already admitted it, so we don't
7 need to go into the inside baseball stuff about this
8 declaration unless there's something substantive you want
9 with it.

10 MR. LEVIN: No. Thank you, Your Honor. I think
11 that would be a fine point to break then.

12 THE COURT: All right. Very good. Okay. So
13 we'll take our lunch break now. We'll reconvene -- I'll
14 give you a full hour, so we'll reconvene at 1:35. I'll
15 remind you that I have a hearing at one that should get
16 done. So if we're a little bit late getting back, you can
17 blame that one on me. So we will see you at 1:35.

18 (Jury out at 12:33 p.m.)

19 THE COURT: We will resume at 1:35, too. Same
20 warning about the hearing that I have at one.

21 MR. LEVIN: Do we have to move anything here?

22 THE COURT: No. We'll do it in another
23 courtroom. That's fine. Keep your stuff here. Thank
24 you.

25 (Lunch recess at 12:34 p.m. until 1:45 p.m.)

1 THE COURT: All right. Let's bring the jury back
2 in and we can continue.

3 MR. TROST: Judge, can we deal with a couple
4 issues first?

5 THE COURT: I'm sorry. I guess we have a couple
6 of issues.

7 MR. TROST: Briefly.

8 THE COURT: Have a seat.

9 MR. TROST: Can we have a standing instruction to
10 this witness about testifying about obvious hearsay type
11 of topics? We've had that come up a couple of different
12 times and stuff has just tumbled out of his mouth and it
13 seems to be an emerging trial tactic.

14 THE COURT: I wouldn't go so far as to say it's a
15 trial tactic. You objected a couple of times. I
16 sustained them.

17 It's fair to make the observation that you have to
18 testify on the basis of what you know firsthand. You
19 can't just tell us that people told you that certain
20 things are true. But I think it's really an instruction
21 to counsel that that's what you have to build your case on
22 is actually admissible evidence, not just hearsay
23 statements.

24 So next issue.

25 MR. TROST: Second issue briefly is there was a

1 lot of discussion about some of these telemarketers --
2 Kaplan, Maurer, Dana Ehrlich -- and their businesses. I
3 would suggest that that type of testimony has opened the
4 door to questioning Mr. Cunningham about his prior
5 involvement, including his prior lawsuits involving these
6 telemarketers.

7 THE COURT: I'm not sure I understand what you
8 mean by that. What do you want to go into?

9 MR. TROST: Just confirm that he has sued these
10 telemarketers in separate actions.

11 THE COURT: No. I don't think that's relevant.
12 Anything else?

13 MR. TROST: No.

14 THE COURT: All right. Let's bring the jury in.

15 (Jury in at 1:51 p.m.)

16 THE COURT: All right. Welcome back. With that,
17 we can continue with Mr. Cunningham's examination. Go
18 ahead, Mr. Levin.

19 MR. LEVIN: Thank you, Your Honor.

20 BY MR. LEVIN:

21 Q. Mr. Cunningham, if you could please turn back to what
22 we were looking at previously, the spreadsheet that you
23 prepared we marked as Exhibit No. 1.

24 A. Yes.

25 Q. And at the top of the first page that I'm now

1 displaying for the jury, could you describe for me what
2 each of these columns show? It may seem obvious, but just
3 for the record.

4 A. So first the left column, under *Montes Calls*, that's
5 just the basic title for the document that I created and
6 it lists the caller IDs that I identified as being
7 associated with Mr. Montes.

8 Next is the phone number that I received the calls on
9 and the corresponding dates for that phone number. So as
10 an example, I received a call from 313-209-4524 on April
11 12th, 2017, to 615-212-9191 for that first row. And then
12 the final right-hand column in bold is the total for calls
13 to 615-212-9191 or 31 calls.

14 Q. And so where it says from 212-9191, were those calls
15 that you made from that number or calls that were placed
16 to that number?

17 A. Those were calls to. I was just being a little
18 unclear when I put that together.

19 Q. Okay. So that was just an error on your part?

20 A. Yes. These were all received calls to me.

21 Q. Okay. And the 31 Calls number that you mentioned at
22 the top of the right-hand column, is that for the entire
23 document or what portion of it?

24 A. This is just the calls at the time that I had
25 identified to 615-212-9191. So it's not for the entire

1 document; it's just for those -- the subset of calls that
2 I had identified at the time.

3 Q. So for that -- you're talking about that first
4 section before the bold heading that appears a little bit
5 further down the page there?

6 A. Right.

7 Q. Okay. And then to the right of that bold heading you
8 have a number of *39 Calls*. So what portion of the
9 document does that pertain to?

10 A. And let me explain this. So as there are two sets of
11 phone records from Republic Wireless, that's kind of how I
12 went through. So I went through one set. And as I said,
13 it's basically end of 2016 forward. And the other set of
14 call records are I believe starting in 2015 to the middle
15 to end of 2016.

16 So I basically went through one document, totaled the
17 calls, and I went through the other document, totaled the
18 calls for the phone number. So under *Call to*
19 *615-212-9191*, that's from the first or earliest call
20 records that I had from -- just because they're separate
21 documents, so I kind of went through them separately
22 instead of doing it all together.

23 Q. Okay. And then if you could turn to the next page of
24 that document, please, which I'm now displaying for the
25 jury. We have another heading and a number, *49 Calls*. So

1 again this may seem obvious, but if you can just explain
2 that for the jury.

3 A. Certainly. These are calls to 615-348-1977, one of
4 my phone numbers. You have the caller IDs listed below
5 that. Then you have the dates in the middle column --
6 again this is from the first spreadsheet or first set of
7 phone records in 2015 -- and then the total of 49 calls
8 based on the *Call Detail Records*.

9 Q. So there's 49 calls then in the section below that?

10 A. Correct.

11 Q. And then lastly, on the third page, we have another
12 heading and another number of 57 calls. Could you explain
13 that, please?

14 A. Same thing. These are the caller IDs below, date in
15 middle column and then the total on the far right.

16 Q. Is this for the number 212-9191 again?

17 A. Yes, I believe so. Yes.

18 Q. So if we count up all the calls below that which move
19 onto the next page, we should see that there are 57 total
20 calls?

21 A. Correct.

22 Q. And if we add up the four numbers in the four
23 headings, that should give us the total number of calls
24 that you were able to identify on your Republic records
25 that you believe are connected to customers of Michael

1 Montes?

2 A. Correct.

3 Q. And were some of these calls placed to you regarding
4 the business that was identified earlier as 8 Figure Dream
5 Lifestyle?

6 A. Yes, they were.

7 Q. And were some of these calls made to you about the
8 business identified as the Millionaire Marketing Machine?

9 A. Yes.

10 Q. What about the Secret Success Machine?

11 A. Yes.

12 Q. What about the Enagic water filtration system you
13 mentioned?

14 A. Yes.

15 Q. Okay. And Elite Marketing Alliance, or TiDOM, do any
16 of these calls relate to that?

17 A. Yes, absolutely.

18 THE COURT: Mr. Cunningham, it's not clear to me
19 exactly how you linked these particular calls to customers
20 of Mr. Montes or what you think are customers of
21 Mr. Montes. So, for example, start with the ones that say
22 *Unknown* under *Caller ID*. How do you tie that call to the
23 defendants in this case?

24 THE WITNESS: Yes, Your Honor. So it's with the
25 app that I have. I can create notes. I can search for a

1 certain number. I can see if, you know, 303-800-6458, how
2 many times did that call me for the -- whatever subset of
3 data that I have.

4 So basically I just went through the app that I have,
5 wrote down the caller IDs. And some of them were unknown,
6 but I would still have the date and the time and I could
7 go to the phone records and say, okay, well, I have an
8 unknown call October 19th, 2015. And I just go to the
9 phone records and say, okay, this is an unknown call
10 October 19th, 2015.

11 THE COURT: And you have the recording of the
12 actual call; is that what that is?

13 THE WITNESS: Yes, Your Honor, either a recording
14 or I have it in my, you know, phone save screenshot.
15 That's just how I would do it at the time.

16 THE COURT: Okay.

17 THE WITNESS: Ideally, recordings are the best.
18 But I could identify them as they were coming in, because
19 it's any given day or time I could be at the gym, I would
20 be driving. I would identify them as best I could.

21 THE COURT: All right. Go ahead, Mr. Levin.

22 MR. LEVIN: Thank you.

23 BY MR. LEVIN:

24 Q. And you believe that all of the calls that are
25 reflected on this spreadsheet were either automated calls,

1 as you described earlier, and/or the prerecorded messages
2 like the ones that we listened to earlier?

3 A. Correct.

4 MR. LEVIN: I have nothing further for
5 Mr. Cunningham. Thank you.

6 THE COURT: Very good. All right.

7 Cross-examination.

8 CROSS-EXAMINATION

9 BY MR. TROST:

10 Q. Good afternoon, Mr. Cunningham.

11 A. Good afternoon.

12 Q. Nice to see you again.

13 A. Likewise.

14 THE COURT: Let me ask you to pull your
15 microphone over just a little bit closer, Mr. Trost.

16 BY MR. TROST:

17 Q. Since we're talking about Exhibit 1, let's stay on
18 that one. At the beginning of Exhibit 1, at the heading
19 you say *Montes Calls*. That's your opinion, your belief,
20 correct?

21 A. Correct.

22 Q. That's part of your claim?

23 A. Yes.

24 Q. And as far as Exhibit 1 goes, none of those -- none
25 of the -- no part of that record details what you believe

1 the substance of that call concerned, correct?

2 A. No. They're based on phone records.

3 Q. You have to go back to the audio recordings in order
4 to --

5 A. Yes.

6 Q. -- make a determination?

7 Now, generally the calls you are seeking compensation
8 for here were calls you received during 2015 to 2017; is
9 that correct?

10 A. Yes, that's the time frame.

11 Q. All right. Now, in 2015 you were retired; is that
12 true?

13 A. For a little bit of the time I guess. That is not a
14 really good categorization of it. I had sold a business
15 and was taking some time and working on fitness and a few
16 other things personally.

17 Q. And during the 2016 time frame you were retired,
18 true?

19 A. For -- again there's not a unique categorization for
20 it. After I sold a business and had some money. I mean,
21 that's the closest way I would describe it.

22 Q. And if you had previously testified that during 2016
23 you were retired, would you go with that testimony that
24 you previously gave?

25 A. That's the closest categorization that I would give

1 for it.

2 Q. All right. And when you received these calls during
3 2015 to 2017, you were a Tennessee resident?

4 A. For part of it.

5 Q. Okay. And part of it you were a Texas resident?

6 A. Correct.

7 Q. Now, we've already talked a little bit about the
8 audio recordings that you made of the various calls,
9 right?

10 A. I've answered questions about them, yes.

11 Q. And you used an app on your phone?

12 A. Yes.

13 Q. And you used that app with regards to all three of
14 your cell phones, right?

15 A. It's a good app. A like it.

16 Q. And we've heard several of these recordings.

17 Mr. Montes' voice wasn't on any of the recordings that we
18 heard here in court, true?

19 A. Correct.

20 Q. And in fact all the recordings that you've made for
21 all the various calls don't have Mr. Montes' voice on it,
22 true?

23 A. Correct.

24 Q. In fact, if Mr. Monte's voice was on it, we probably
25 would have heard it here today, right?

1 A. The recordings are what they are. You can't make
2 anyone's voice to be on them or not be on them. It's just
3 that's what I heard and that's what I recorded.

4 Q. None of the audio messages said they were -- nothing
5 on those messages or recordings said they were from
6 TollFreeZone.com, did they?

7 A. No.

8 Q. Was there anything you saw in the electronic data of
9 any of those calls that tied those calls to
10 TollFreeZone.com?

11 A. Could you explain to me as far as "electronic data"?

12 Q. Sure, anything of the electronic signature with
13 respect to any of the calls as far as data on your end
14 that tied the calls to TollFreeZone.com.

15 A. All I know is that my phone rang and people were
16 pitching me for these get-rich-quick schemes that I
17 tracked back to Montes. So I'm not sure if the phone
18 ringing, if you're trying to -- I'm not sure what you're
19 really asking.

20 Q. Okay. Now, with all these calls that you're seeking
21 compensation for, on a number of occasions you continued
22 talking with the people that called, right?

23 A. Yes.

24 Q. And in fact some of the examples we've heard this
25 morning kind of illustrate that, don't they?

1 A. The calls this morning were just prerecorded
2 messages.

3 Q. Sure.

4 A. I don't think any of them are me actually talking
5 back and forth with any of them.

6 Q. Sure. Fair enough. Now, you didn't just hang up?

7 A. Sometimes I did and sometimes I left messages.
8 Depends on if I have time and what's going on. I have
9 other things to do other than talk to telemarketers all
10 day long.

11 Q. Sure. Would you agree that sometimes when you're
12 talking with telemarketers you use an alias?

13 A. On a few occasions I have. Generally I just use
14 *Craig Cunningham.*

15 Q. But on a few occasions you have?

16 A. Yes.

17 Q. Okay. Would you agree that as shown by Exhibit 4B,
18 one of the calls we heard this morning, that when you were
19 given the option to press a certain number to opt out from
20 future calls, you didn't take -- didn't do that, right?

21 A. Correct.

22 Q. You started this lawsuit back in November 2016,
23 right?

24 A. Correct.

25 Q. And you started it yourself?

1 A. Correct.

2 Q. It was only within the last year that you retained
3 Attorney Levin?

4 MR. LEVIN: Objection.

5 THE COURT: What's the relevance?

6 MR. TROST: It's kind of establishing when
7 Mr. Cunningham was doing things for himself in this
8 lawsuit.

9 THE COURT: All right. Overruled. Go ahead.

10 BY MR. TROST:

11 Q. When you filed the lawsuit, you chose not to sue any
12 of the people or companies that you talked with on the
13 phone in these calls, correct?

14 THE COURT: Okay. That's not relevant. I'm
15 going to --

16 MR. TROST: Okay.

17 BY MR. TROST:

18 Q. With respect to the calls that you're seeking
19 compensation for from the defendants here, do you have any
20 evidence that Mr. Montes physically dialed any of the
21 calls himself?

22 A. No.

23 Q. And you already agree that his voice doesn't appear
24 on any of those recordings, correct?

25 A. I don't think I heard his voice on any recording.

1 Q. Are you aware that there are multiple other website
2 platforms that allow people to make dialer calls much like
3 the defendants' platform?

4 A. I have heard of a few, although I have not seen any
5 of them associated with the businesses that were calling
6 me.

7 Q. So you were not aware that people like Kaplan,
8 Maurer, and Dana Ehrlich used other platforms to make
9 calls?

10 A. I just went on the YouTube videos where Dana is
11 talking with Michael Montes to conclude that they probably
12 do business together. I went off of Jerry Maurer's
13 website where he recommended Michael Montes again to
14 conclude that they probably do business together.

15 MR. TROST: Move to strike that answer as
16 nonresponsive to the question.

17 THE COURT: Overruled.

18 MR. TROST: All right.

19 THE COURT: The answer stands.

20 BY MR. TROST:

21 Q. Do you have any information that Dana Ehrlich, Kaplan
22 or Maurer, use other website platforms? Yes or no.

23 A. I'm not sure which platforms. Again obviously they
24 said they use Montes, but I'm not sure of what other --
25 you know, all the platforms that they've had to their

1 disposal, what they've used or not used.

2 Q. Let's talk about a different topic --

3 A. Okay.

4 Q. -- cell phones. You know you have three of them?

5 A. I do.

6 Q. And we know it's not through Verizon or U.S. Cellular
7 or some service provider that most of us know about,
8 right?

9 MR. LEVIN: Objection.

10 THE COURT: Overruled. Go ahead.

11 A. I don't know. I think Republic is pretty popular. I
12 mean, they're not from -- I think they're out of North
13 Carolina, but reasonably popular.

14 Q. Now, your calling plan has an unlimited number of
15 minutes, correct?

16 A. Yes.

17 Q. And the records that you've introduced as Exhibits 5
18 to 10 were records you received by sending a subpoena
19 yourself, correct?

20 A. All of them, correct.

21 Q. Were those subpoenas that you sent in this case?

22 MR. LEVIN: Objection.

23 THE COURT: What's the basis?

24 MR. LEVIN: The discussion that we had this
25 morning before we selected the jury.

1 THE COURT: Overruled. I'll allow it. Go ahead.

2 A. Could you repeat that question, please?

3 Q. Sure. The records that you received weren't sent --

4 were sent -- you received as a result of sending a

5 subpoena, correct?

6 A. Correct.

7 Q. And it wasn't a subpoena that you sent in this case?

8 A. Correct.

9 Q. I'm going to ask you to take a look at what's been

10 marked by the plaintiffs as Exhibit No. 11. I believe

11 this is the -- one of the *Declarations of Custodian of*

12 *Records* related to those call records, basically a

13 certificate of authenticity. Is that a document that

14 you've seen before that you're familiar with?

15 A. Yes.

16 Q. All right. And if you look at Paragraph No. 3, does

17 it say "I'm in receipt of a Civil Proceeding Subpoena

18 Request served on Republic Wireless, signed by Attorney,

19 requesting specified records of the business named below"?

20 A. Yes.

21 Q. You're not an attorney, right?

22 A. That's correct.

23 Q. Do you know if an attorney signed the subpoena with

24 regards to these records?

25 A. I'm not real sure. I guess you would have to ask

1 Ethan Grossman.

2 Q. And you're referring to Ethan Grossman because he's
3 the guy that signed that certificate --

4 A. He is.

5 Q. -- as far as you know?

6 A. I'm not sure what you mean.

7 Q. All right. I'll withdraw the question. Are you
8 aware of the federal Do Not Call Registry?

9 A. Yes.

10 Q. Were you aware of this registry back in 2015?

11 A. Yes.

12 Q. At that time did you register any of your three phone
13 numbers that are at issue in this case on that registry?

14 A. No.

15 Q. To this day are any of those three phone numbers
16 registered with the Do Not Call Registry?

17 A. No. I don't think so.

18 MR. TROST: All right. That's all the questions
19 I have for you.

20 THE COURT: Any redirect?

21 REDIRECT EXAMINATION

22 BY MR. LEVIN:

23 Q. Mr. Cunningham, Plaintiff's Exhibit No. 11, the
24 certificate signed by somebody named Ethan Grossman that
25 Mr. Trost was just asking about, how did you obtain these

1 certificates?

2 A. It was sent to me by Subsentio as part of the
3 complete phone records, *Call Detail Records*, in the
4 subpoena response that -- just to clarify, Subsentio does
5 the subpoena processing for Bandwidth and they also do it
6 for Republic Wireless. So Subsentio is basically a
7 third-party compliance company that does this. So that's
8 what I received from them in response to the subpoenas:
9 The records and the certificate of authenticity from the
10 custodian of records.

11 Q. So a subpoena was sent to Republic Wireless and you
12 got back those records that we looked at briefly this
13 morning along with these certificates?

14 A. Correct.

15 Q. Mr. Trost asked you if you ever continued speaking
16 with some of the people who were placing these calls to
17 you. I believe you said that you did?

18 A. Yes.

19 Q. Okay. During any of those conversations did you tell
20 those people that you were consenting for them to call you
21 again?

22 A. No.

23 Q. Did you ever tell them that you were interested in
24 their business opportunities?

25 A. Yes. I would learn more about it to, you know, get

1 more information about it and try and figure out who's
2 calling and how they're making calls and so forth. You
3 know, if I am aggressive with them, then they're probably
4 going to clam up and not tell me any more information. So
5 I've got to be a little bit of -- you know, got to talk to
6 them and get them to let their guard down so they'll tell
7 me the information I'm looking for. It's all part of the
8 investigation and inquiry into the facts of who's making
9 these calls.

10 Q. But again you didn't consent to any automated calls
11 or prerecorded messages?

12 A. No.

13 Q. You didn't invite any of these people to call you or
14 leave prerecorded messages?

15 A. No. Before the calls, generally I didn't know who
16 these people were or the businesses that they were
17 associated with until the phone rang and I did some
18 investigation to figure out who they are and what they're
19 trying to sell me this time.

20 Q. Mr. Trost asked you if you used an alias during some
21 of your conversations with these people and I believe you
22 said that you sometimes did?

23 A. Yes.

24 Q. Why did you do that?

25 A. If they had called several times -- it's really odd.

1 I'll get calls from the same person maybe six months apart
2 or three months apart. They'll call with, like I said,
3 one program and then they'll come back with a different
4 one.

5 Now, if they're making many calls a day, they may not
6 remember exactly -- you know, basically they couldn't
7 remember that we talked before. And if it sounds like the
8 same person, then I might use a different alias or if they
9 called a different number, I use a different name at the
10 time, again to just try and figure out who they are and
11 why they're calling and how they're making the calls.

12 MR. LEVIN: Nothing further.

13 THE COURT: All right. Thank you,
14 Mr. Cunningham.

15 (Witness excused at 2:16 p.m.)

16 * * *

17

18

19

20

21

22

23

24

25

1 I, CHERYL A. SEEMAN, Certified Realtime and Merit
2 Reporter, in and for the State of Wisconsin, certify that
3 the foregoing is a true and accurate record of the
4 proceedings held on the 10th day of June, 2019, before
5 the Honorable James D. Peterson, Chief Judge of the
6 Western District of Wisconsin, in my presence and reduced
7 to writing in accordance with my stenographic notes made
8 at said time and place.

9 Dated this 5th day of July, 2019.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

/s/

Cheryl A. Seeman, RMR, CRR
Federal Court Reporter

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying reporter.